IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.1071 of 2000

For Approval and Signature:
HON'BLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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RAJARAM BABULAL KEVAT & Ors. - Appellants

Versus

STATE OF GUJARAT - Respondent

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Appearance :
MR JM BUDDHBHATTI for MR SUNIL C PATEL for Appellants
MR KT DAVE, APP for Respondent.
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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE H.B.ANTANI

Date : 04/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (“the Code” for short)

is directed against judgment dated October 5, 2000 rendered by the learned Sessions Judge, Valsad at Navsari, in Sessions Case No.160 of 1996 by which the six appellants, who are original accused Nos.1 to 5 and 7, have been convicted under Sections 395 and 397 of the Indian Penal Code (“IPC” for short) and each sentenced to suffer R.I. for ten years and fine of Rs.25,000=00, in default S.I. for two years, for commission of offence punishable under Section 395 IPC as well as R.I. for seven years and fine of Rs.5,000=00, in default S.I. for one year, for commission of offence punishable under Section 397 IPC. It may be stated that substantive sentences are ordered to run concurrently.

2. The facts emerging from the record of the case are as under:

Complainant Mohanbhai Jivanbhai is residing at Village Mandir, District Valsad, with his wife and children. He is running a poultry farm which is situated in the compound of his house. The house consists of four rooms on ground floor and four rooms on the first floor. The incident in question took place on June 19, 1996. On the day of incident, the complainant was at his house along with wife Vasantiben and son Kaushik. The

complainant and his family members took supper in the evening. At about 20 hours, the wife of the complainant opened back door to offer food to dog. At that time, she was pushed back by four unknown persons. Before Mohanbhai could understand anything, the four persons secured their forcible entry into the house. One of them caught hold of Mohanbhai by his neck and asked Mohanbhai to sit near the wall. One of the intruders, who was armed with pipe, inflicted injury with pipe on Mohanbhai as a result of which, he started bleeding profusely. The wife of Mohanbhai made an attempt to apply bandage to prevent bleeding but she was prevented from doing so by one of the intruders. Son of the complainant, i.e. Kaushik, was sitting on sofa kept near kitchen. One of the intruders informed the complainant that they had information that the complainant was having cash of Rs.2 Lac and gold ornaments and asked the complainant to hand over the same to him. In order to threaten and extort cash and other articles, one of the intruders put dagger on the neck of his son Kaushik. The intruders also asked the complainant and his family members to keep mum. The complainant informed those who had secured forcible entry in his house that he was having nothing with him to hand over. Thereupon, two of the intruders took the complainant to another room where a steel cupboard was kept. The two

persons asked the complainant to open the same. The complainant informed that it was not locked. Therefore, those two persons opened the safe and took out clothes, tape, radio, miscellaneous items, including precious coins of other countries, etc.. One of the two persons placed the items taken out from the cupboard in two separate rexine bags which were lying in the house of the complainant. Thereafter, mattresses of the cot kept in the room were ransacked and from beneath the mattresses Rs.1 Lac, which the complainant had obtained by way of past recovery from his customers, were taken out by those two persons. The cash was of different denominations. After collecting the cash lying beneath the mattress, the hands of the complainant were tied from behind with a twine. Two of the intruders thereafter took the complainant to first floor along with his wife. On the first floor, there was a showcase. The complainant was asked to open the same. The complainant replied that his hands were tied and light was also off and, therefore, it was not possible for him to open the same. Thereupon, the three persons gave fist and kick blows to him. The wife of the complainant was also thrashed. After the hands of the complainant were untied, the complainant broke open the drawer of the showcase with the help of screwdriver. Thereafter, the showcase was opened by the

intruders who picked up one to three calculators lying therein. Again, the mattresses kept on cot lying in the first floor of the house were ransacked but nothing was found. Thereafter, the complainant and his wife were brought down from the first floor. Again, the hands of the complainant were tied and he with his family members was made to sit and threatened not to utter a word, after which, the intruders left the house of the complainant with booty. The complainant lodged complaint with reference to incident in question with P.S.O., Jalalpur Police Station. The complaint of Mohanbhai was investigated by PSI Mr.Desai of Jalalpur Police Station. Further investigation into the case was made by Mr.J.G.Mehta, who was then PI, L.C.B. Branch, pursuant to orders of the District Superintendent of Police. During the course of investigation, accused Nos.1, 2 and 3 were arrested on July 4, 1996. Certain incriminating articles were discovered pursuant to voluntary statements made by the accused Nos.1 and 2. The panchnama of place of incident was also drawn. The accused Nos. 4 and 5 were arrested on July 6, 1996 and part of the articles looted were discovered whereas *saris* and other articles were discovered pursuant to disclosure statement made by accused No.5 on July 6, 1996. The accused No.6 was arrested on July 13, 1996. On July 13, 1996, the

Investigating Officer requested the Executive Magistrate to hold identification parade. Identification parade was accordingly held on the same day wherein the complainant identified the accused Nos.1, 2, 3, 4, 5 and 6 in presence of panch witnesses. The accused No.7, i.e. Lallu Bhallu Kevat, was arrested on July 25, 1996. On his arrest, another *yadi* dated July 26, 1996, was addressed by the Investigating Officer to the Executive Magistrate to hold identification parade. The identification parade was held on July 26, 1996 wherein the complainant and his wife Vasantiben identified the accused No.7 in presence of panch witnesses. Further, the original accused No.8, i.e. Ramkaran, came to be arrested on August 3, 1996 and, therefore, a *yadi* dated August 5, 1996 was forwarded by the Investigating Officer to the Executive Magistrate to hold identification parade. Accordingly, the identification parade was held on August 5, 1996 wherein the complainant and his wife identified the accused No.8 in presence of panch witnesses. It may be stated that injuries were sustained by complainant Mohanbhai in the incident and, therefore, he was referred to Medical Officer for treatment. The Investigating Officer obtained certificate of injury from the Medical Officer.

3. On completion of investigation, the eight accused were chargesheeted in the Court of learned Judicial Magistrate First Class, Navsari, for commission of offences punishable under Sections 395 and 397 IPC as well as Section 25(1)(A) of the Arms Act, 1959.

4. As the offences punishable under Sections 395 and 397 IPC are exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Valsad at Navsari for trial where it was numbered as Sessions Case No.160 of 1996. The learned Sessions Judge framed necessary charge against the accused at Exh.2. It was read over and explained to them. They pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) complainant Mohanbhai Jivanbhai as P.W.-1 at Exh.18; (2) Harishbhai Chhaganbhai Patel as P.W.-2 at Exh.20; (3) Vimalkumar Sureshbhai Desai as P.W.-3 at Exh.22; (4) Laljibhai Naranbhai Goswami as P.W.-4 at Exh.23; (5) Harishbhai Keshubhai Jadeja as P.W.-5 at Exh.26; (6) Dr.Bhanubhai Babubhai Hirpara as P.W.-6 at Exh.40; (7) wife of complainant Vasantiben Mohanbhai as P.W.-7 at Exh.43; (8) Kaushikbhai Mohanbhai Patel as P.W.-8 at Exh.47; (9) Executive Magistrate Navinchandra Barsanbhai Vasava as P.W.-9 at Exh.50; (10) Chandrakant Amratbhai Chauhan as

P.W.-10 at Exh.59; (11) Gijubhai Kanjibhai Patel as P.W.-11 at Exh.60; (12) Nanakram Chotamal Luhana as P.W.-12 at Exh.61; (13) Piyushkumar Jayantilal as P.W.-13 at Exh.62; (14) Dineshchandra Suvalal Agrawal as P.W.-14 at Exh.63; (15) Jaishanker Ganpatram Mehta as P.W.-15 at Exh.69 to prove its case against the accused. The prosecution also produced documentary evidence such as complaint lodged by Mohanbhai at Exh.19; panchnama of place of incident at Exh.21; panchnama indicating discovery of suitcase pursuant to disclosure statement made by accused No.1 at Exh.24; panchnama indicating discovery of audio cassette, two wrist watches pursuant to disclosure statement made by accused No.2 at Exh.25; panchnama indicating seizure of holdall of the accused from the place of incident at Exh.27; panchnama of place of incident as pointed out by the accused No.1 at Exh.28; medical certificate indicating injury sustained by complainant Mohanbhai which was issued by Dr.Hirpara at Exh.41; *yadi* sent by PI, L.C.B., to the Executive Magistrate to hold identification parade after arrest of accused Nos.1 to 6 at Exh.51; record of identification parade wherein accused Nos.1 to 6 were identified by the complainant at Exh.52; *yadi* sent by the Investigating Officer to hold identification parade after arrest of accused No.7 at Exh.53; panchnama of identification

parade wherein accused No.7 was identified at Exh.54; *yadi* sent by the Investigating Officer to the Executive Magistrate to hold identification parade after arrest of accused No.8 at Exh.57; panchnama of identification parade wherein accused No.8 was identified at Exh.58; panchnama indicating discovery of telephone, audio cassette, etc. pursuant to disclosure statement made by accused No.4 at Exh.70; panchnama indicating discovery of *saris* pursuant to disclosure statement made by accused No.5 at Exh.71; panchnama indicating identification of luggage discovered during investigation by the complainant at Exh.72, etc. to prove its case against the appellants.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code. The case of each appellant in his further statement was that he was innocent and had not committed any offence and was involved falsely in the case. However, no defence evidence was led by any of the accused.

6. On appreciation of evidence adduced by the

prosecution, the learned Judge held that it was proved by the prosecution that all the accused co-jointly committed robbery on June 19, 1996 at the house of complainant Mohanbhai Jivanbhai. The learned Judge held that satisfactory evidence was produced by the prosecution to establish that the accused were correctly identified by the complainant and his wife. According to the learned Judge, it was established by the prosecution that the accused persons while committing robbery and dacoity used deadly weapons and caused grievous hurt to the complainant. The learned Judge noticed that no firearm was used while committing dacoity and held that commission of offence punishable under the provisions of the Arms Act was not made out. In view of abovereferredto conclusions, the learned Judge convicted the appellants and two others under Sections 395 and 397 IPC. Thereafter, the matter was adjourned to accord hearing to the accused on the question of sentence to be imposed on them. At that stage, it was noticed that original accused No.6, i.e. Balasing Nanaku Kevat, was absconding. Therefore, no order of sentence was passed against him and the case is pending against him. The rest of the accused were heard on the question of sentence to be imposed on them for commission of offences punishable under Sections 395 and 397 IPC. After hearing the

accused, the learned Judge has imposed on each accused sentence of R.I. for ten years and fine of Rs.25,000=00, in default S.I. for two years, for commission of offence punishable under Section 395 IPC as well as R.I. for seven years and fine of Rs.5,000=00, in default S.I. for one year, for commission of offence punishable under Section 397 IPC vide judgment dated October 5, 2000.

7. Feeling aggrieved, the original accused No.8, i.e. Ramkaran Mahaprasad Shrivastava, preferred Criminal Appeal No.1022 of 2000 from the Jail wherein the Court appointed Ms.Sadhna Sagar, learned advocate practising in this Court, to render legal assistance to him whereas six accused, i.e. original accused Nos.1 to 5 and 7 preferred Criminal Appeal No.1071 of 2000 wherein the name of original accused No.8, i.e. Ramkaran Mahaprasad Shrivastava, was shown as one of the appellants. As the original accused No.8 had filed appeal from the Jail and his name was also figuring as one of the appellants in Criminal Appeal No.1071 of 2000, the Division Bench of this Court comprising N.G.Nandi & Ravi R.Tripathi, JJ. directed the Superintendent, Central Jail, Baroda, vide order dated July 14, 2003, to record statement of the convict, i.e. Ramkaran Shrivastava, showing his preference/option to proceed with either of the

appeals. Accordingly, communication dated July 17, 2003 forwarded by the Deputy Superintendent, Central Jail, Baroda, along with the statement made by the accused No.8, was placed before the Division Bench. Perusal of the statement of the accused No.8 indicated that he wanted to proceed with Criminal Appeal No.1022 of 2000 filed by him through Jail wherein he was provided services of Ms.Sadhna Sagar as advocate. Therefore, by an order dated July 22, 2003, the name of the original accused No.8 was directed to be deleted from the array of the appellants in Criminal No.1071 of 2000.

8. As Criminal Appeal No.1022 of 2000 filed by the original accused No.8 from the Jail and Criminal Appeal No.1071 of 2000 filed by original accused Nos.1 to 5 and 7 arose out the same judgment rendered in Sessions Case No.160 of 1996 decided by the learned Sessions Judge, Valsad at Navsari, they should have been heard and disposed of together in order to avoid conflict of decisions. However, the record shows that the original accused No.8, who had filed Criminal Appeal No.1022 of 2000 from the Jail, moved Criminal Misc. Application No.7127 of 2003 praying the Court to hear his appeal immediately in view of the difficulties faced by him, which were highlighted in the said application. It was

noticed by the Court that both the appeals, i.e. Criminal Appeal No.1022 of 2000 and Criminal Appeal No.1071 of 2000, were placed on Board of Final Hearing, but one of the appellants in Criminal Appeal No.1071 of 2000 was absconding and, therefore, it was not possible to hear the said appeal. Ms.Sadhna Sagar, learned counsel of the original accused No.8, pointed out to the Court that the original accused No.8 had undergone imprisonment of more than seven years and, therefore, prayer to hear Criminal Appeal No.1022 of 2000 filed by him should be accepted. It was also stated at the Bar by the learned counsel of the original accused No.8 that she was not inclined to challenge the impugned judgment on merits and was inclined to address the Court only on the question of sentence to be imposed on the accused No.8. Therefore, an order was passed to separate Criminal Appeal No.1022 of 2000 from Criminal Appeal No.1071 of 2000 after which Criminal Appeal No.1022 of 2000 was heard.

9. After hearing the learned counsel of the accused No.8, and the learned Additional Public Prosecutor for the State, the Division Bench comprising D.K.Trivedi & M.S.Shah, JJ. disposed of Criminal Appeal No.1022 of 2000 by reducing the sentence imposed on the accused No.8 vide judgment dated September 24, 2003. It

may be stated that initially, it was observed by the Division Bench that the merit of the case was not examined and no view was being expressed on merits as other co-accused had filed Criminal Appeal No.1071 of 2000, which was pending disposal. However, the operative part of the judgment makes it very clear that the conviction recorded by the learned Judge of the trial Court for the offences under Sections 395 and 397 IPC was confirmed. From the decision rendered by the High Court, it is evident that conviction is not confirmed qua the original accused No.8 only but it is confirmed as a whole. As observed earlier, the sentence imposed on the original accused No.8 was modified and he was directed to suffer R.I. for nine years and fine of Rs.15,000=00, in default R.I. for one year, for commission of offence punishable under Section 395 IPC whereas R.I. for seven years and fine of Rs.5,000=00, in default R.I. for six months was imposed on the accused No.8 for commission of offence punishable under Section 397 IPC.

10. Feeling aggrieved by the sentence imposed by the High Court in Criminal Appeal No.1022 of 2000, the original accused No.8 preferred Criminal Appeal No.1009 of 2004 [arising out of S.L.P. (Cri.) No.3165 of 2004] before the Supreme Court. It was noticed by the Supreme

Court that the accused No.8 had undergone the sentence of more than eight years and six months. Therefore, on the facts and in the circumstances of the case, the Supreme Court awarded the sentence of imprisonment against the original accused No.8 under Section 395 IPC by reducing the same to the period already undergone vide judgment dated September 13, 2004.

11. Mr.J.M.Buddhbhatti, learned counsel appearing for Mr.Sunil C.Patel, learned advocate of the appellants, contended that the testimony of complainant Mohanbhai establishes that only four persons had secured forcible entry in his house and committed robbery as a result of which, unwarranted conviction of the appellants under Section 395 IPC deserves to be set aside. According to the learned counsel of the appellants, nothing incriminating could be recovered from the appellants and, therefore, the learned Judge of the trial Court was not justified in convicting the appellants under Section 395 IPC. It was argued that the evidence on record clinchingly establishes that at the time of incident, there were no lights in the house of the complainant as a result of which, it was not possible for the complainant and/or others to observe features of those persons who had secured forcible entry in his

house and committed robbery and, therefore, the evidence adduced by the prosecution regarding identification parades wherein the appellants were identified as perpetrators of crime, should have been discarded by the learned Judge of the trial Court. What was maintained by the learned counsel of the appellants was that the testimony of the complainant would indicate that before holding of identification parade, the appellants were shown to him and, therefore, the evidence adduced by him regarding identification of the appellants at identification parades should not have been believed by the learned Judge of the trial Court for fastening criminal liability on the appellants. It was emphasized that the learned Judge of the trial Court has failed to appreciate the evidence on record in its true perspective and, therefore, the appeal should be accepted.

12. Mr.K.T.Dave, learned Additional Public Prosecutor for the State, argued that the testimony of wife of the complainant unerringly and clinchingly establishes that eight accused had secured forcible entry in the house of the complainant and committed dacoity of different articles including cash and, therefore, it is not correct to contend that the appellants should not have been convicted under Section 395 IPC. The learned

counsel of the State Government emphasized that stray sentences occurring in the testimony of the complainant would not establish that the identification parade was a farce or that the complainant and others were shown accused before holding of the identification parade and as all necessary precautions were taken by the Executive Magistrate before holding the identification parades, the evidence relating to identification parades should be accepted by this Court. The learned counsel further pointed out that the conviction recorded by the learned Judge of the trial Court now stands confirmed in view of the judgment of this Court rendered in Criminal Appeal No.1022 of 2000 which, in turn, stands confirmed subject to modification of sentence by the decision of the Supreme Court dated September 13, 2004 rendered in Criminal Appeal No.1009 of 2004 and, therefore, instant appeal, which has no merits, should be dismissed.

13. This Court has heard Mr.J.M.Buddhbhatti, learned counsel of the appellants, and Mr.K.T.Dave, learned Additional Public Prosecutor for the State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of

the case.

14. From the record of the case, it is evident that the incident took place on June 19, 1996 when the complainant and his wife were present in their house. The plea that the testimony of the complainant shows that only four persons had secured forcible entry in the house of the complainant and robbed the complainant and his wife, as a result of which invocation of provisions of Section 395 IPC is illegal, cannot be accepted. The testimony of complainant Mohanbhai recorded at Exh.18 would show that one of the intruders had assaulted him with an iron pipe and caused injuries on his scalp. His testimony would indicate that on receipt of injury, he had almost lost senses though he had not become unconscious. Under these circumstances, failure on his part to state that there were more than five persons who had committed dacoity is understandable. However, the record of the case clearly indicates that the wife of the complainant was with the complainant and no injury was caused to her and, therefore, she was able to observe everything minutely. In fact, she had opened the door to offer the food to the dog and at that time, she was pushed by four unknown persons, who had secured forcible entry in her house. Her testimony, which is recorded at

Exh.43, in terms shows that after four persons had secured forcible entry in her house, those four persons were followed by other four persons. This part of the incident is to be found in paragraph 2 of her testimony. In her cross-examination, it was suggested to her that it was not stated by her in her police statement that four persons, who had pushed her and entered into her house, were followed by other four persons. In reply to the said suggestion, it was stated by the witness that she was not remembering whether it was so stated or not by her in her police statement. It is relevant to notice that the Investigating Officer is not asked any question whether witness Vasantiben had omitted to state in her police statement that other four persons had not followed those four persons, who had secured entry in the house of the complainant forcibly. In view of this state of affairs, there is no reason for the Court to disbelieve the assertion made by witness Vasantiben that in all eight persons had secured forcible entry into the house and committed dacoity after injuring her husband. The invocation of Section 395 IPC, therefore, cannot be regarded as erroneous so as to warrant interference of this Court in instant appeal.

15. The plea that nothing incriminating was

recovered and, therefore, involvement of concerned appellants in offences punishable under Sections 395 and 397 IPC is not established, has no merits at all. The record of the case shows that after the arrest of the original accused No.1, he had made disclosure statement pursuant to which, the suitcase was discovered by the Investigating Officer in presence of panch witnesses. That panchnama is produced on record of the case at Exh.24. Similarly, audio cassettes, two wrist watches, etc. were discovered pursuant to disclosure statement made by the accused No.2 and the panchnama indicating the same has been produced by the prosecution at Exh.25. The panchnama indicating seizure of holdall belonging to the accused is a pointer. Moreover, while in custody, the original accused No.1 had pointed out the place where he had committed dacoity with others and it is the same place, which is mentioned in the panchnama produced by the prosecution at Exh.21. Further, Exh.70 shows that telephone was discovered pursuant to voluntary disclosure statement made by the accused No.4 while he was in police custody. Similarly, *saris* were discovered pursuant to disclosure statement made by the accused No.5 when he was in police custody and this is quite evident from the contents of panchnama produced at Exh.71. All those articles were clearly and unerringly identified by the

complainant as belonging to him, which is quite evident from the contents of the panchnama produced at Exh.72. Therefore, it is wrong to contend that the evidence on record does not connect the appellants with commission of offences punishable under Sections 395 and 397 IPC.

16. The plea that there was complete darkness in the house of the complainant at the time of the incident and, therefore, the complainant could not have identified any of the appellants as accused at identification parade or that the evidence of identification parade should not have been believed by the learned Judge of the trial Court as the complainant had full opportunity of seeing and identifying the appellants as the accused before holding of identification parades, is devoid of merits. This Court cannot be oblivious of the fact that it is dealing with the evidence tendered by rustic villagers. The testimony of complainant Mohanbhai read with that of his wife Vasantiben would indicate that they had taken supper before the incident in question. Therefore, it would be reasonable to hold that at the time when the complainant and his wife had taken dinner, there was sufficient light to enable them to eat the items of food. Further, after the dinner was over, the wife of the complainant

had opened door to offer left out food to the dog which means that she was able to see and feel as to where the door was and how to open it. Therefore, the claim advanced by the learned counsel of the appellants that there was complete darkness in the house of the complainant cannot be accepted. The evidence of the complainant and his wife further shows that there was a lantern known as '*petromax'* in the house, which was emitting light. It is true that the complainant in his testimony has stated that the mantle of the '*petromax'* was damaged by the accused. It may be mentioned that mantle means a mesh cover fixed round a gas jet to give incandescent light when heated. However, the evidence on record does not establish that at what point of time, mantle of the '*petromax*' was broken, i.e. whether it was damaged after all the accused were identified or before. Moreover, if the light was sufficient for the accused persons to identify the complainant and his wife meaning thereby their targets, there is nothing unnatural if the complainant and his wife identified the accused as assailants. It is well settled that visibility capacity of urban people is not the standard to be applied to the villagers. The testimony of the complainant and his wife would show that the accused had remained in the house for a pretty long time and the accused had made the

complainant and his wife to move with them in the rooms situated on the ground floor as well as on the first floor. Not only that, but the accused had asked the complainant to open the safe and tied his hands from back. Therefore, the complainant and his wife had full opportunity of observing features of those who had secured forcible entry in the house and committed dacoity after injuring the complainant, minutely and, therefore, identification of the accused later on by them need not surprise any one. It is true that in paragraph 18 of his testimony, the complainant has stated that when the Police had arrested the accused they were made to sit in a van, which was parked in the court-compound, and that they were shown to him at the rest house and in the court-compound. However, as noticed earlier, the original accused Nos.1, 2 and 3 were arrested on July 4, 1996 whereas the accused Nos.4 and 5 were arrested on July 5, 1996 and the accused No.6 was arrested on July 13, 1996 whereas the accused No.7 was arrested on July 25, 1996 and the accused No.8 was arrested on August 3, 1996. The cross-examiner could not bring on record nor could suggest to the complainant that a particular accused was shown to him by the police before holding identification parade. The cross-examination on this point is as vague as anything could

be and cannot persuade the Court to come to the conclusion that the identification parade was a farce as is sought to be contended by the learned counsel of the appellants.

17. At this stage, it would be relevant to notice the testimony of wife of the complainant recorded at Exh.43. She has, in terms, stated that those who were identified by her in the Court as accused were identified by her in identification parade, which was held by the Executive Magistrate. The suggestion made by the defence that the Police had shown to her the accused before holding identification parades and, therefore, she was able to identify them at the identification parades is emphatically denied by her. Her testimony gets complete corroboration from the testimony of Executive Magistrate Mr.Navinchandra Barsanbhai Vasava recorded at Exh.50. A glance at Exh.50 makes it evident that all necessary precautions, which should be taken before holding identification parade; were taken by Mr.Vasava before holding identification parades where the accused were identified by the complainant and his wife. Cogent and convincing reasons have been assigned by the learned Judge of the trial Court, who had advantage of observing demeanour of the witnesses, for believing the evidence

adduced by the prosecution regarding test identification parade with which this Court fully concurs. On the facts and in the circumstances of the case, this Court comes to the conclusion that the identification of the appellants as those who had secured forcible entry in the house of the complainant and committed dacoity is not in doubt at all.

18. Though this Court has negatived the contentions raised by the learned counsel of the appellants on merits after examination of evidence on record, there is another difficulty in the way of the learned counsel of the appellants to persuade this Court to set aside the impugned judgment. As observed earlier, the original accused No.8 had filed Criminal Appeal No.1022 of 2000. That is disposed of by the Division Bench of this Court vide judgment dated September 24, 2003. While disposing of the said appeal, his conviction is confirmed on the same set of evidence which this Court is called upon to consider in instant appeal. The learned counsel of the appellants has not argued that case of the original accused No.8 stands on different footing or it is distinguishable than the case of the present appellants. The judgment of the High Court is confirmed by the Supreme Court subject to reduction of sentence as

indicated in judgment dated September 13, 2004 rendered in Criminal Appeal No.1009 of 2004. Therefore, on the same set of evidence it would not be prudent and reasonable for this Court to come to the conclusion that the appellants have not committed any offence and that they are not liable to be punished for commission of offences punishable under Sections 395 and 397 IPC. The net result of above discussion is that conviction of the appellants under Sections 395 & 397 IPC is found to be eminently just and is hereby confirmed. However, there is no manner of doubt that on the principle of parity, the appellants shall also be entitled to reduction of sentence as ordered by the Supreme Court and to that extent, the appeal will have to be accepted.

For the foregoing reasons, the appeal is partly allowed. Judgment dated October 5, 2000 rendered by the learned Sessions Judge, Navsari, in Sessions Case No.160 of 1996 holding that the appellants are guilty of offences punishable under Sections 395 and 397 of the Indian Penal Code is hereby confirmed. However, the Supreme Court by judgment dated September 13, 2004 rendered in Criminal Appeal No.1009 of 2004 has reduced the sentence imposed on original accused No.8 to eight years and six months. Accordingly, the sentence imposed

on each appellant for commission of offence punishable under Section 395 IPC is hereby modified, and each appellant is sentenced to R.I. for eight years and six months and fine of Rs.15,000=00, in default, R.I. for one year, for commission of offence punishable under Section 395 IPC. Similarly, for commission of offence punishable under Section 397 IPC, each appellant is sentenced to R.I. for seven years and fine of Rs.5,000=00, in default R.I. for six months. It is clarified that the appeal is allowed only to the extent indicated hereinabove regarding reduction of sentence imposed on each appellant for commission of offence punishable under Sections 395 & 397 IPC. Muddamal be disposed of in terms of directions given by the learned Judge of the trial Court in the impugned judgment.

[J.M.PANCHAL, J.]

[H.B.ANTANI, J.]

Rajendra